Supreme Court, U.S.
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No. ___
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IN THE

Supreme Court of the United States

TEAMSTERS AUTOMOBILE TRANSPORT CHAUFFERS, DEMONSTRATORS, and HELPERS LOCAL UNION NO. 604,
Petitioner,

v.

ALLIED SYSTEMS, LTD. and TRANSPORT SUPPORT, INC.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITION FOR A WRIT OF CERTIORARI

JAMES F. WALLINGTON *
BAPTISTE & WILDER, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 200365
(202) 223-0723

* Counsel of Record

Attorney for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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QUESTIONS PRESENTED FOR REVIEW

What is the standard to be applied by district courts upon application for injunctive relief by an Employer engaged in interstate commerce against a Labor Organization representing its employees under a collective bargaining agreement enforceable under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, where the Labor Organization is engaging in area standards picketing protected by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, directed at a separate Employer at a common site, and where the signatory Employer asserts that the provisions of Section 4 of the Norris-La Guardia Act, 29 U.S.C. § 104, which withdraw jurisdiction of the courts of the United States for the issuance of any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute, do not apply under the exception established by this Court's opinion in *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970).

Where a preliminary injunction order issued by a district court is presented to a jury on trial for damages for breach of a collective bargaining agreement, is the issue of the propriety of the preliminary injunction under Section 4 of the Norris-La Guardia Act, 29 U.S.C. § 104, moot if no pretrial appellate review has been undertaken and the Employer, subsequent to the jury award, closes its operations which were subject to the preliminary injunction.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to this proceeding are the Petitioners Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers Local Union No. 604, a labor organization headquarted in St. Louis, Missouri affiliated with the International Brotherhood of Teamsters, AFL-CIO and the Respondents Allied Systems, Ltd., a Georgia limited partnership, and Transport Support, Inc., a Delaware corporation, each being a wholly-owned subsidiary of Allied Holding, Inc., a publically held corporation (trading symbol "AHI").

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers Local Union No. 604, a labor organization headquartered in St. Louis, Missouri a and affiliated with the International Brotherhood of Teamsters, AFL-CIO, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision sought to be reviewed has been reported as *Allied Systems, Ltd. v. Teamsters Automobile Transport Chauffeurs, Demonstrators and Helpers*, Local 604, 304 F. 3d 785 (8th Cir. 2002) and is reprinted in the appendix hereto

at pages 2a through 12a. The order of the Court of Appeals denying the petition for rehearing to the panel was entered October 17, 2002, and is reprinted in the appendix at page 1a.

JURISDICTION

The Court of Appeals entered its judgment on September 17, 2002. Teamsters Local 604 filed a timely petition for rehearing on September 2002, which was denied on October 17, 2002. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Appellants Teamsters Automobile Transport Chauffeurs, Demonstrators, and Helpers Local Union No. 604 and its officers, John Thyer and Terry Manion, presented this appeal on June 14, 2001 from a jury verdict entered on February 16, 2001 in the United States District Court for the Eastern District of Missouri. The verdict awarded to Appellees Allied Systems, Inc. and Transport Support, Inc. the sum of $81,000.00 for breach of contract between the parties.

On October 8, 1999, Allied Systems, Ltd. and its subsidiary corporation, Transport Support, Inc., filed a complaint against Teamsters Local 604 and its officers alleging a breach of contract and seeking temporary restraining order and preliminary injunction. At a hearing conducted on October 8, 1999 before U.S. District Judge E. Richard Webber on Allied's motion for temporary restraining order, the parties agreed to a settlement which mooted both motions. Allied continued to pursue the October 8, 1999 complaint on a general allegation of breach of contract damages. On October 27, 1999, Teamsters Local 604 and its officers filed an Answer. A scheduling order pursuant to Rule 16, F.R. Civ. P., and a case management order were entered on November 16, 1999 and December 9, 1999, respectively.

On December 23, 1999, Allied filed an amended complaint with an additional request for injunctive relief. On December 23, 1999, U.S. District Judge E. Richard Webber conducted a hearing on a new motion for temporary restraining order enjoining picketing by Teamsters Local 604 and requiring arbitration of "any and all disputes which are causing the present work stoppage." On December 29, 1999, the preliminary injunction was entered.

On June 27, 2000, the District Court entered a memorandum and order granting Allied leave to file a Second Amended Complaint which alleged damages arising from work stoppages in October, 1999 and December, 1999. The parties engaged in pretrial discovery and filed various pretrial evidentiary motions between June 27, 2000 and February 8, 2001.

On February 8, 2001, U.S. District Judge E. Richard Webber issued a memorandum and order on various pretrial motions *in limine* raised by the parties. Between February 12, 2001 and February 16, 2001, a jury trial was conducted upon Allied's breach of contract damages claims. Teamsters Local 604 moved for directed verdict at close of Allied's case on February 14, 2001, and such motion was denied. Jury instructions were argued and presented on February 15, 2001 and the jury rendered a verdict against Teamsters Local 604 in the amount of $81,000.00 on February 16, 2001. The jury's verdict was entered as judgment by the Court on February 16, 2001.

On February 26, 2001, Teamsters Local 604 moved for a new trial. After various post trial motions, the Honorable E. Richard Webber entered the final Judgment and Order in this case on May 16, 2001. Teamsters Local 604 and its officers filed the Notice of Appeal on June 14, 2001.

REASONS FOR GRANTING PETITION

I. THE DISTRICT COURT LACKED JURISDICTION TO ISSUE THE TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING THE DECEMBER AREA STANDARDS PICKETING BY LOCAL 604.

Federal courts are affirmatively deprived of their equitable powers to enjoin labor disputes, such as the area standards picketing instituted by Local 604 in December 1999, by Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104. Section 4 specifically provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of a labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts.
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment.

Clearly, Allied's contention that the December area standards picketing violated the no-strike clause contained in Article 7 of the NMATA constitutes a labor dispute between Allied and Local 604. *See* 29 U.S.C. § 113(c). Thus, in order to be held valid the December 29, 1999 injunction must be found to comply with the "narrow exception" to the Norris-LaGuardia Act's comprehensive anti-injunction provisions recognized by the Supreme Court in *Boys Markets v. Retail Clerks*, 398 U.S. 235 (1970). In *Boys Markets*, the Supreme Court explained that in a case brought under § 301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. 185(a), to enforce a no-strike provision of a collective bargaining agreement when a Union has struck or threatened to strike over an arbitable dispute, "Norris LaGuardia's policy

of nonintervention by the federal courts should yield to the overriding interest in the successful implementation of the arbitration process." *Id.* at 252.

In the instant case, the district court's temporary retaining order and preliminary injunction certainly do not fit into this "narrow exception." In fact, "[c]ases decide since *Boys Markets* have made it clear that an injunction is appropriate only when such relief is necessary to compel specific performance of the mandatory arbitration provisions of the contract," and "[i]t is essential in each case that the activity being enjoined represents a union response to dispute over a grievance which the union was contractually bound to arbitrate." *National Rejectors Industries v. United Steelworkers of America*, 562 F.2d 1069, 1075 (8th Cir. 1977). *See also Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397, 409-11 (1976) (holding that an injunction may not issue when the question is whether the strike breaches the no-strike provisions of the collective bargaining agreement rather than whether the dispute underlying the strike is arbitrable); and *Jacksonville Bulk Terminals v. Int'l Longshoremen's Assoc.*, 457 U.S. 702, 722 (1982) (holding that because the underlying dispute causing the work stoppage was not arbitrable the Norris-LaGuardia Act prohibited the issuance of injunctive relief pending the arbitrator's ruling on the legality of the strike under the collective bargaining agreement).

The *Boys Markets* exception to Norris-LaGuardia's proscription against issuing injunctions in labor disputes was discussed extensively in *Allied Systems, LTD. v. Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm., Local 327*, 179 F.3d 982 (6th Cir. 1999), *cert. denied*, 528 U.S. 965 (2000), a case involving a dispute between the instant Appellees and another local union under the NMATA. In that case, the Court of Appeals for the Sixth Circuit affirmed the district court's denial of injunctive relief sought by Allied stating that before an injunction could be proper under the interplay

between the Norris-LaGuardia Act and § 301(a) of the LMRA, "the court must find that the dispute underlying the controversy is subject to binding arbitration under the terms of the collective bargaining agreement." *Id.* at 987 (*quoting Int'l Union United Auto. Workers v. Lester Eng'g Co.*, 718 F.2d 818, 822 (6th Cir. 1983)). There, as here, the union presented a colorable claim that the underlying dispute was not subject to the grievance and arbitration provisions of Article 7 of the NMATA, and, therefore, the court was without jurisdiction to issue an injunction. *Id.* at 990.

Nevertheless, there is a split in the Circuits over what legal standard a court considering a *Boys Market* injunction should apply. *Compare Allied Systems*, 179 F.3d 982 *with Chicago Dist. Council of Carpenters pension Fund v. K&I Construction Inc.*, 270 F.3d 1060, 1066 (7th Cir. 2001).

In light of the Norris-LaGuardia Act's limitation of the jurisdiction of district courts to issue injunctions in labor disputes, the inquiry on review into the jurisdiction of the district court to issue the instant injunction is a legal one.

Area standards picketing allows a union "to protect the employment standards it has negotiated in a particular geographic area from the unfair competitive advantage that would be enjoyed by an employer whose labor cost package was less than those of other employers subjected to the are contract standards." *O'Neil's Markets v. United Food and Commercial Workers Union*, 95 F.3d 733, 736 n.1 (8th Cir. 1996) (citation omitted). Peaceful area standards picketing is a protected activity by Section 7 of the LMRA, 29 U.S.C. § 157. *Id.* at 737. Moreover, a "no-strike" clause does not prevent economic action against a non-party to a collective bargaining agreement. *See, e.g., 12th & L Ltd. Partnership v. Operating Engineers Local 99*, 369 F. Supp 1174, 1178 (D.D.C. 1975).

It was the Allied's contention, however, that the area standards picketing undertaken by Local 604 was not a primary picket against Auto Auction, but rather a secondary picket directed against Allied, and thus a violation of the no-strike clause. This argument requires a determination of Local 604's motivation in establishing the December picket line. Fortunately, the NLRB has developed and courts have adopted an "evidentiary framework in which to evaluate claims of illegal secondary motivation in common situs cases," such as this one.[1] *Mautz & Oren, Inc. v. Teamsters, Chauffeurs, and Helpers Union, Local No. 279*, 882 F.2d 1117, 1121 (7th Cir. 1989). The union's picketing is presumed to be primary if the following standards, known as the *Moore Dry Dock* standards, are met:

> (1) The picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises; (2) at the time of the picketing the primary employer is engaged in its normal business at the situs; (3) the picketing is limited to places reasonably close to the location of the situs; and (4) the picketing discloses clearly that the dispute is with the primary employer.

Sailors' Union of the Pacific (Moore Dry Dock), 92 N.L.R.B. 547, 549 (1950).

The evidence reveals that Local 604's December area standards picketing plainly conformed to the preceding standards and should have enjoyed the presumption of primary picketing status. First, it is undisputed that Local 604 did not begin picketing the rail yard until Mr. Bledsoe telephoned Mr. Thyer and informed him that Auto Auction was at the rail yard. The uncontradicted testimony of the Local 604

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[1] Common situs cases involve those where the union is picketing against a primary employer, in this case St. Louis Auto Auction, at a location where other neutral employers are also performing work, such as Allied.

President Terry Manion further established that the pickets only remained in place at such times as he determined Auto Auction was on the premises. There can be no doubt that the first of the *Moore Dry Dock* standards was satisfied.

Second, the primary employer, Auto Auction, was engaged in its normal business at the rail yard. Auto Auction is a wholesale automobile distributor that sells used cars to dealerships in the St. Louis area. Necessarily, one aspect of Auto Auction's business must be to get the cars from external locations to its main facility. The second *Moore Dry Dock* standard is thus satisfied.

The third *Moore Dry Dock* standard is also satisfied. It was undisputed that Mr. Manion set up the picket on the morning of December 21, 1999 where the rail road told him to, an at this time there was only one gate being used by both Auto Auction and Allied employees. Allied contends, however, that it established a reserve gate system on December 22 and that because Local 604 did not move its picket their underlying motivation must have been to disrupt Allied's business.

Where primary and neutral employees enter an leave a work site through a common gate "[t]he union is entitled to picket the common entrance." *Mautz & Oren*, 882 F.2d at 1122. Neutral employers may, however, set up reserve gates to create separate entrances for the primary employer and other neutral employers to minimize the disruption caused by the picketing of the primary employer. *Id.* Nevertheless, Allied's reserve gate signs were improper because they did not establish one gate for Auto Auction, the primary employer, and another gate for all other neutral employers. Instead, they attempted to create a reserve gate for the primary target of the picketing, Auto Auction, along with all other neutral employers who were to enter the rail yard. A valid the reserved gate system must put the union on notice regarding the area where it can effectively restrict its appeal

to the primary employer and public without enmeshing neutrals in its dispute. *See, e.g., Allied Concrete, Inc. v. NLRB*, 607 F.2d 827, 831 (9th Cir. 1979). The gate signs posted by Allied did not isolate the primary target of the picketing, Auto Auction, and thus were not valid.

Furthermore, the posting of these signs was not communicated to Local 604. It is simply common sense that in order to be valid and effective the neutral employer "must, in some fashion, give notice to the union of the existence of the reserve gate system." *Constar, Inc. v. Plumbers Local 447*, 568 F. Supp. 1440, 1448-9 (E.D. Cal. 1983), *aff'd* 748 F.2d 520 (9th Cir. 1984). Indeed, the signs were not even posted until December 23, the last day of the picketing. Before that time, Allied only had placed small paper signs at the gates on December 22.

Alternatively, even if the reserve gate was proper and Auto Auction used the second gate after December 23, 1999, the site of the picketing was reasonably close to the second gate that the third *Moore Dry Dock* standard was still satisfied. As shown by the diagram of the rail yard, which the parties agreed was an accurate depiction, the location of the picketing was reasonably close reasonably close to the reserve gate. This location was the only the site that the rail road allowed Local 604 to picket, and neither Allied nor the rail road ever asked Local 604 to move the pickets to a different site.

The last *Moore Dry Dock* standard is plainly satisfied because the picket signs all identified Auto Auction as the sole and primary target of the picketing. Consequently, Local 604 having satisfied all of the *Moore Dry Docks* standards should have enjoyed the presumption that its picketing was primary and directed at Auto Auction rather than Allied. Furthermore, both Mr. Thyer and Mr. Manion testified that they never told any employee not to cross the area standards picket line. Allied's drivers also testified that the Union did not instructed them to refrain from working.

The district court's determination to issue the injunction was plainly an abuse of its discretion as it relied upon an erroneous legal premise that the Norris LaGuardia Act did not apply in this situation. In addition, it is clear that the court improperly placed the burden on Local 604 to show why an injunction should not issue rather than upon Allied, who rightfully should have borne the burden of proving that it should issue. *See, e.g., Local Union No. 884 v. Bridgestone/Firestone, Inc.*, 61 F.3d 1347, 1351 (8th Cir. 1995) ("The party moving for a preliminary injunction bears the burden of proving that it should issue.").

The error committed by the district court in issuing the restraining order and preliminary injunction was subsequently compounded when excerpts from each were read to the jury. The ultimate issue of whether Local 604 violated the no-strike clause of the CBA in regard to the December picketing was not left to the determination of the jury. Rather, the jury was informed that the district court had already determined that issue when the following sentence from the December 23, 1999 Restraining Order and Order to Show Cause was read to them: "Defendants and defendant Local Union No. 604 members have engaged in a work stoppage and tie-up of equipment in violation of a no-strike clause contained in an agreement between Plaintiffs and Defendant Union."

First, the district court committed clear legal error by issuing the restraining order and preliminary injunction against Local 604 without the jurisdiction to do so. Then the district court's findings, which as demonstrated above were clearly erroneous and against the weight of the evidence, were communicated to the jury with the totality of the resulting error being so prejudicial that only a new trial can cure the error.

II. THE PROPRIETY OF THE DECEMBER 1999 RESTRAINING ORDER AND PRELIMINARY INJUNCTION IS NOT MOOT WHERE SUCH DECISIONS WERE PRESENTED TO THE JURY ON TRIAL FOR DAMAGES.

The propriety of the district court's December 1999 restraining order and preliminary injunction is not a moot issue, as found by the Court of Appeals, because their introduction into evidence and subsequent reading to the jury substantially prejudiced the rights of Local 604 and seriously affected the fairness of the trial. While Local 604 does not contest that the conduct enjoined by preliminary injunction may be moot, this does not moot the appeal of the issue of whether the district court had jurisdiction to issue it in the first instance since allowing it to be read to the jury substantially prejudiced the rights of the Petitioner. Indeed, when the district court's preliminary injunction order finding that Local had breached the no-strike clause of the party's collective bargaining agreement was read to the jury, the ultimate issue in the case—whether or not Local 604 had in fact breached the no-strike clause—was taken out of the hands of the jury to decide and essentially predetermined by the district court. Since the district court was without jurisdiction to issue the preliminary injunction, then the reading of the injunction order to the jury concluding that Local 604 had breached the no strike clause of the party's collective bargaining agreement must be reversible error.

While the case relied upon by the Eighth Circuit in declining to review the propriety of the preliminary injunction at issue, *Lebanon Chemical Corp v. United Farmers Plant Foods, Inc.*, 179 F.3d 1095 (8th Cir 1999), does decline to review a preliminary injunction after the issue became moot, the Court of Appeals in *Lebanon* specifically qualified its holding by stating, "There is nothing that this court could now do to remedy the effects of the injunction even if it were

improvidently granted." That is not the case here. In the instant situation, the improvidently granted injunction was allowed into evidence at the trial on the merits and, therefore, was allowed to improperly influence the jury's verdict, thus substituting the district court's preliminary findings for the jury's own verdict. After the district court's order finding Local 604 in breach of its contractual obligations was read into evidence, there was nothing left for the jury to decide. Here, unlike in *Lebanon Chemical*, this Court has the opportunity to remedy the effects of the district court's error by granting Local 604 a new trial that has not been unjustly tainted by the introduction into evidence of an improper preliminary injunction order.

CONCLUSION

Due to the differing interpretations in the Circuit Courts over what legal standard a court considering a *Boys Market* injunction should apply, we request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

JAMES F. WALLINGTON *
BAPTISTE & WILDER, P.C.
1150 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 200365
(202) 223-0723
Attorney for Petitioner

* Counsel of Record